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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

K.F., a Student on behalf of a Parent | NO.  
D.F.,

Appellant,

v.

Tucson Unified School District,

Respondent.

**NOTICE OF REMOVAL OF ACTION  
FROM STATE COURT TO FEDERAL  
COURT**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT,  
DISTRICT OF ARIZONA**

Notice is hereby given that Respondent Tucson Unified School District (“District”) hereby removes the entire action described below from Arizona Superior Court, Pima County, to the United States District Court, District of Arizona, pursuant to 28 U.S.C. §§ 1441 and 1446:

1. On or about March 17, 2023 Appellant K.F., a minor student purportedly on behalf of Parent D.F., filed in in the Arizona Superior Court, Pima County, in cause no. C20231208, the following documents:

(A) a Receipt (a true and accurate copy of which is page 1 of Exhibit A);

(B) an Application for Deferral or Waiver of Court Fees or Costs and Consent to Entry of Judgement (a true and accurate copy of which is pages 2-5 of Exhibit A);

1 (C) a Civil Cover Sheet (a true and accurate copy of which is pages 6-7 of  
2 Exhibit A);

3 (D) an Order Regarding Deferral or Waiver of Court Fees or Costs and Consent  
4 to Entry of Judgement (a true and accurate copy of which is pages 8-10 of Exhibit A);

5 (E) a Notice of Appeal for Judicial Review of Administrative Decision  
6 (hereinafter “Notice of Appeal”) (a true and accurate copy of which is pages 11-18 of  
7 Exhibit A).

8 (F) an Affidavit in Support of Application for Deferral or Waiver of Service of  
9 Process Fees (a true and accurate copy of which is page 18 of Exhibit A).

10 (G) the Notice of Appearance on Behalf of Respondent Tucson Unified School  
11 District (a true and accurate copy of which is pages 19-20 of Exhibit A).

12 2. The Notice of Appeal reflects that Parent D.F. presented a due process  
13 complaint against the District relating to the special education and the Individualized  
14 Education Plan (“IEP”) for Parent’s child, K.F., which led to a hearing before the  
15 Arizona Office of Administrative Hearings (“OAH”) and a decision by the OAH on the  
16 complaint. A true and accurate copy of the OAH final decision is attached hereto as  
17 Exhibit B. The OAH due process proceedings were authorized pursuant to the  
18 Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1415, and A.R.S. §  
19 766.

20 3. Pursuant to the IDEA and the Arizona statute, any party aggrieved by the  
21 findings and decision have the right to bring a civil action in any State court of  
22 competent jurisdiction or in a federal district court of the United States without regard to  
23 the amount in controversy. 20 U.S.C. § 1415(l)(2); A.R.S. § 766(E)(3). This right to  
24 file a civil action was expressly stated in the OAH final decision.

25 4. The Arizona Administrative Procedure Act (“APA”) is found at A.R.S. §  
26 12-901 et seq. and it applies to appeals from an State administrative agency’s final  
27 decision in a contested case or appealable agency action. The proceedings before OAH  
28 were not a contested case as defined in A.R.S. § 41-1001 or an appealable agency action

1 as defined in A.R.S. § 41-1092(4). The APA pursuant to A.R.S. § 12-902 does not  
2 apply to political subdivisions such as school districts. Nor does the APA apply to  
3 efforts to appeal under the IDEA and Arizona statute dealing with special education  
4 children.

5 5. The claims of parent D.F. to be aggrieved by the OAH final decision  
6 would support federal question jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331,  
7 1343 in addition to being specifically authorized pursuant to 20 U.S.C. § 1415(l)(2).

8 6. The State Court action is removable to this Federal Court pursuant to 28  
9 U.S.C. § 1441(a)-(c) because this Court would have original jurisdiction over the  
10 federal claims under the IDEA.

11 7. Removal jurisdiction exists if “the action, though ostensibly grounded  
12 solely on state law, is actually grounded on a claim in which federal law is the exclusive  
13 authority.” *Federated Dep’t Stores v. Moitie*, 452 U.S. 394, 408 (1981); *C.M.E. on*  
14 *behalf of W.P.B v. Shoreline School District*, 2020 WL 1931551, \* 2 (W.D. Wa.  
15 1/13/20), *report adopted*, 2020 WL 1929399 (W.D. 4/21/2020). Federal courts have  
16 denied motions to remand appeals from special education due process decisions.  
17 *Id.*(listing supporting citations).

18 8. The District is the sole named Respondent and party to the proceedings  
19 before OAH, and it seeks this removal to federal court.

20 9. The District was not served with process, but counsel for the District  
21 made an appearance voluntarily in State Court to facilitate this removal. A true and  
22 accurate copy of the Notice of Appearance is attached as pages 19-20 of Exhibit A.

23 10. This removal is timely filed pursuant to 28 U.S.C. § 1446(b) as it was  
24 filed within thirty days after receipt by the District, through service or otherwise, of a  
25 copy of the initial pleading setting forth the claim for relief.

26 11. Attached hereto as Exhibit A are all process, pleadings, orders, and  
27 documents filed in the State Court action as reflected in the Electronic Clerk’s Record  
28 (“ECR”).

